

**38 CFR Part 21****RIN 2900-AQ91****Modifications of Approval Requirements for Courses Designed to Prepare  
Individuals for Licensure or Certifications****AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend its regulations to implement the provisions of the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016. In this proposed rule, we would add new approval requirements as specified in the statutory provisions for accredited and nonaccredited programs designed to prepare an individual for licensure and certification in a State. We would also implement VA's new authority to waive the added approval requirements under certain circumstances and adjust the authority of a State approving agency to add new approval criteria. In addition, we would add a circumstance for disapproval of a program designed to prepare an individual for licensure and certification, as prescribed by the law we are implementing.

**DATES:** Comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Comments may be submitted through [www.Regulations.gov](https://www.Regulations.gov).

Comments should indicate that they are submitted in response to "RIN 2900 -AQ91(P) - Modifications of Approval Requirements for Courses Designed to Prepare Individuals for Licensure or Certifications." Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Amitay, Chief, Policy and Regulation Development Staff, (225C), Education Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-9800. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:**

Prior to the passage of the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016 (Pub. L. 114-315), there were discrepancies among the States regarding the requirements for approval of programs of education designed to prepare someone for State licensure or certification or board certification. There were reports of GI Bill participants who were unable to secure employment following graduation because their program of education did not meet the standards required for licensure, certification, State board approval, or employment. There were also concerns that State approving agencies (SAAs) were exercising their authority to subject nonaccredited courses to additional approval criteria as they deemed necessary in a manner that treated private for-profit educational institutions substantially and detrimentally differently than their public or private not-for-profit counterparts. Further, while SAAs had the authority to impose additional approval criteria for approval of nonaccredited courses under 38 U.S.C. 3676, they had no authority to deem additional approval criteria necessary with respect to accredited courses.

To address these concerns, Pub. L. 114-315, sec. 409, amended 38 U.S.C. 3676(c), further amended by the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, Pub. L. 116-315, sec. 1016, to add the following approval requirements for educational programs that are designed to

prepare individuals for licensure or certification in a State, regardless of whether the program is “deemed approved” (meaning it satisfies the requirements of 38 U.S.C. 3672(b)(2)(A)):

- If a course is designed to prepare an individual for licensure or certification in a State, the course must meet all instructional curriculum licensure or certification requirements of such State.
- If a course is designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval, licensure, or certification, the course must meet such standards.
- If a course is designed to prepare an individual for licensure to practice law in a State, the course must be accredited by a specialized accrediting agency for programs of legal education or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b), from which recipients of law degrees from such accredited programs are eligible to sit for a bar examination in any State (at this time, the only organization that satisfies this criterion is the American Bar Association).

Section 409 also added the provision in 38 U.S.C. 3676(f)(1) that allows the Secretary of VA to waive the additional approval requirements if he or she determines all of the following:

- The educational institution is not accredited by an agency or association recognized by the Secretary of Education.

- The course did not meet the additional requirements at any time during the 2-year period preceding the date of the waiver.
- The waiver furthers the purposes of the educational assistance programs administered by the Secretary or would further the education interests of individuals eligible for assistance under such programs.
- The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

We would add the new requirements for approval of educational programs designed to prepare individuals for licensure or certification contained in the amended sec. 3676(c) to 38 CFR 21.4253(d)(9) and 38 CFR 21.4254(c)(14). We would also specify in 38 CFR 21.4253(d)(9) and 38 CFR 21.4254(c)(14) that the Secretary or designee may waive the added approval requirements if conditions specified in sec. 3676(f)(1) are met and indicate the process for applying for a waiver. The waiver decision will be made by the Education Service Director or other designated personnel. See 38 U.S.C. 512 (Secretary has broad authority to “delegate, or authorize successive redelegation of, authority to act and to render decisions, with respect to all laws administered by the Department, to such officers and employees as the Secretary may find necessary”); 38 CFR 21.4001(a) (“authority is delegated to the Under Secretary for Benefits and to supervisory or adjudicative personnel within the jurisdiction of the Education Service, designated by him or her to make findings and decisions under 38 U.S.C. Chapters 34

and 36 and the applicable regulations, precedents and instructions, as to programs authorized by these paragraphs.”)

Section 409 also amended 38 U.S.C. 3679 to require VA or an SAA to disapprove a course of education designed to prepare an individual for licensure or certification unless the educational institution providing the course publicly discloses “in a prominent manner” any conditions or additional requirements, including training, experience, or examinations, required to obtain the license, certification, or approval for which the course of education is designed to provide preparation. We would add a new paragraph (e) to § 21.4259 to indicate that VA or an SAA would be required to disapprove a licensing or certification program if the institution fails to publicly and prominently disclose additional approval requirements. The disclosure would be considered to be sufficiently prominent if the educational institution publishes the conditions or requirements on a publicly facing website, in their catalog, and in any publication which explicitly mentions “educational assistance benefits for servicemembers (and their dependents) or veterans (and their dependents)” or which, in the view of the Secretary, is intended for VA educational assistance beneficiaries.

Furthermore, under sec. 409(f), an individual enrolled in a program subject to disapproval under any of the amendments made by sec. 409 must be allowed to complete any program if he or she remains continuously enrolled at the same educational institution (i.e., the student must be allowed to be “grandfathered”). Thus, we would include a statement in § 21.4259(e) that an individual may complete a program of education even if it is subject to disapproval under any of the amendments made by sec. 409 provided that the individual remains continuously enrolled at the same educational institution.

Section 410 of Pub. L. 114-315 adjusted the SAAs’ authority to add additional approval criteria for approving either accredited or nonaccredited programs by requiring

SAAAs to consult with VA before imposing such criteria and by requiring a VA determination about the criteria. VA must find the criteria both 1) necessary and 2) equitable in its treatment of public, private, and proprietary for-profit educational institutions. Therefore, in proposed §§ 21.4253(d)(10) and 21.4254(c)(15), we would include a requirement that prior to an SAA being allowed to impose any additional criteria, the SAA must present a written proposal to the Secretary, or designee, justifying the need for the additional criteria. The proposal is necessary to ensure that any additional criteria imposed by an SAA are necessary and equitable regardless of whether the criteria are imposed on public, private, or for-profit institutions. The proposal would have to describe the problem and explain how the imposition of the additional criteria will correct the problem. It would also have to state whether State or Federal laws, regulations, or policies require the imposition of the additional criteria, and explain whether alternative means of correcting the problem were considered. In addition, the written proposal would have to contain an attestation that the additional criteria will be equitable regardless of whether they are imposed on public, private, or for-profit institutions. The Secretary, or designee, would determine whether the criteria are necessary and equitable and could change the determination if, after implementation, it becomes apparent that the criteria were unnecessary or treated schools inequitably in practice.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory

Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). VA has determined that, although there may be a number of educational training facilities and SAAs considered small entities which may be affected by this proposed rule, they would not be not significantly impacted by this rule.

Allowing waiver of the added approval requirements under certain circumstances, as well as requiring SAAs to present a written proposal to VA justifying the need for adding additional approval criteria for approving either accredited or nonaccredited programs, would likely have some impact on both educational training institutions and SAAs. However, the impact would be minimal. VA estimates that five educational facilities will request a waiver per year and that the estimated cost for any educational institution seeking a waiver will be less than \$300. Also, VA estimates that approximately eleven requests per year from SAAs will be received to add additional approval criteria and the estimated cost for SAAs making these requests will also be less than \$300. Therefore, the number of schools and SAAs affected is not substantial and the impact on each is not significant. Therefore, under 5 U.S.C. 605(b), the initial

and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

### Paperwork Reduction Act

This proposed rule includes provisions that would constitute new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collections of information contained in this rulemaking should be submitted through [www.regulations.gov](http://www.regulations.gov). Comments should indicate they are submitted



to in response to “RIN 2900-AQ91 - Modifications of Approval Requirements for Courses Designed to Prepare Individuals for Licensure or Certifications.”

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OMB is required to make a decision concerning the collections of information contained in this rulemaking within 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on proposed collections of information in--

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department’s estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collections of information contained in 38 CFR 21.4253(d)(9), 21.4254(c)(14), 21.4253(d)(10), and 38 CFR 21.4254(c)(15) are described immediately following this paragraph.

Title: Waiver of Additional Licensing and Certification Approval Requirements.

OMB Control No: 2900-XXXX (New/TBD)

CFR Provision: 38 CFR 21.4253(d)(9), 21.4254(c)(14)

Summary of collection of information: The new collection of information in proposed §§ 21.4253(d)(9) and 21.4254(c)(14) would allow educational institutions to apply for a waiver of additional approval requirements for educational programs that are designed to prepare individuals for licensure or certification in a State.

Description of need for information and proposed use of information: This collection of information is necessary to allow VA to determine whether to waive additional approval requirements for educational programs designed to prepare individuals for licensure or certification in a State when waiver is requested. The information will be used by VA to determine if the educational institution's request for a waiver of the additional approval requirements may be granted.

Description of likely respondents: Educational institutions that apply to VA, through their State approving agency of jurisdiction, for a waiver of additional approval requirements.

*Estimated number of respondents:* 5 in FY 2021.

*Estimated frequency of responses:* This is a one-time collection.

*Estimated average burden per response:* 2 hours.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 10 burden hours.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$270.70 (5 applicants per year x 2 hours per application x \$27.07\*).

\* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$27.07 per hour. This information is available at:  
<https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

Title: Request for Additional Approval Requirements for Licensing and Certification Programs.

OMB Control No: 2900-XXXX (New/TBD)

CFR Provision: 38 CFR 21.4253(d)(10), 21.4254(c)(15)

Summary of collection of information: The new collection of information in proposed §§ 21.4253(d)(10) and 21.4254(c)(15) would require an SAA seeking to impose additional approval requirements for educational programs that are designed to prepare individuals for licensure and certification programs to present a written proposal to VA that justifies the need for the additional criteria.

Description of need for information and proposed use of information: The information will be used by VA to determine if the additional approval criteria presented by an SAA are necessary and equitable for educational institutions offering programs designed to prepare an individual for licensure and certification in a State.

Description of likely respondents: State approving agencies.

*Estimated number of respondents:* 11 in FY 2021.

*Estimated frequency of responses:* This is a one time collection.

*Estimated average burden per response:* 1 hour.

*Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 11 burden hours.

*Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$297.77 (11 applicants per year x 1 hour per application x \$27.07\*).

\* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for “all occupations” of \$27.07 per hour. This information is available at: <https://www.bls.gov/oes/current/oesnat.htm#15-0000>.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.027, Post-9/11 Veterans Educational Assistance; 64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans’ Educational Assistance; 64.124, All-Volunteer Force Educational Assistance.

## List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Claims, Colleges and universities, Education, Employment, Schools, Veterans, Vocational education, Vocational rehabilitation.

## Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on December 20, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

***Luvenia Potts,***

Regulations Development Coordinator,  
Office of Regulation Policy & Management,  
Office of General Counsel,  
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR Part 21 as set forth below:

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart D – Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

2. In § 21.4253, amend paragraph (d) by revising the last sentence of the introductory text and adding paragraphs (9) and (10).

#### § 21.4253 Accredited courses.

\* \* \* \* \*

(d) \* \* \*The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency if the Secretary or designee, in consultation with the State approving agency, approves the additional criteria as necessary and equitable in its treatment of public, private, and proprietary for-profit educational institutions:

\* \* \*

(9)(i) For a course designed to prepare an individual for licensure or certification in a State, the course meets all instructional curriculum licensure or certification requirements of such State.

(ii) For a course designed to prepare an individual for licensure to practice law in a State, the course is accredited by a specialized accrediting agency for programs of legal

education or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b), from which recipients of law degrees from such accredited programs are eligible to sit for a bar examination in any State.

(iii) For a course designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval, licensure, or certification, the course meets such standards.

(iv) An educational institution may apply, through their State approving agency of jurisdiction, to the Secretary or designee for a waiver of the requirements of this paragraph (d)(9). The State approving agency will forward an application for waiver, together with its recommendation for granting or denying the application, to the Secretary or designee. The Secretary or designee may grant a waiver upon a finding that all of the following criteria have been met:

(A) The educational institution is not accredited by an agency or association recognized by the Department of Education.

(B) The course did not meet the requirements of this paragraph (d)(9) at any time during the 2-year period preceding the date of the waiver.

(C) The waiver furthers the purposes of the educational assistance programs administered by VA or would further the education interests of individuals eligible for assistance under such programs.

(D) The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(10) Before requiring a school and its accredited courses to meet any additional criteria, the State approving agency must present a written proposal to the Secretary or designee justifying the need for the additional criteria and containing an attestation that the criteria will treat all schools equitably, regardless of whether they are public, private or for-profit institutions. The Secretary or designee will determine whether the additional criteria are necessary and treat schools equitably based on the proposal and any additional information submitted. The Secretary or designee may change the determination at any time if, after implementation, it becomes apparent that the criteria are unnecessary or schools are treated inequitably under the criteria.

(i) The written proposal must contain a description of the need for the additional criteria and an explanation of how the imposition of the additional criteria would remedy the problem. The proposal must also contain a statement concerning whether State or Federal laws, regulations, or policies require the imposition of the additional criteria and an explanation of the consideration of any alternative means to achieve the same goal as the additional criteria.

(ii) The Secretary or designee may request such additional information from the State approving agency as the Secretary or designee deems appropriate before determining whether the criteria are necessary and treat schools equitably.

\* \* \* \* \*

(Authority: 38 U.S.C. 3675(b)(3), 3676(c), (f))

3. Amend § 21.4254 by revising paragraph (c)(14) and adding paragraph (c)(15).

§ 21.4254 Nonaccredited Courses.

\* \* \* \* \*

(c) \* \* \*



(14)(i) For a course designed to prepare an individual for licensure or certification in a State, the course meets all instructional curriculum licensure or certification requirements of such State.

(ii) For a course designed to prepare an individual for licensure to practice law in a State, the course is accredited by a specialized accrediting agency for programs of legal education or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b), from which recipients of law degrees from such accredited programs are eligible to sit for a bar examination in any State.

(iii) For a course designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval, licensure, or certification, the course meets such standards.

(iv) An educational institution may apply, through their State approving agency of jurisdiction, to the Secretary or designee for a waiver of the requirements of this paragraph (c)(14). The State approving agency will forward an application for waiver, together with its recommendation for granting or denying the application, to the Secretary or designee. The Secretary or designee may grant a waiver upon a finding that all of the following criteria have been met:

(A) The educational institution is not accredited by an agency or association recognized by the Department of Education.

(B) The course did not meet the requirements of this paragraph (c)(14) at any time during the 2-year period preceding the date of the waiver.

(C) The waiver furthers the purposes of the educational assistance programs administered by VA or would further the education interests of individuals eligible for assistance under such programs.

(D) The educational institution does not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except for the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(15) Such additional reasonable criteria as may be deemed necessary by the State approving agency if the Secretary or designee, in consultation with the State approving agency, approves the additional criteria as necessary and equitable in its treatment of public, private, and proprietary for-profit educational institutions. The Secretary or designee will determine whether the additional criteria are necessary and treat schools equitably based on a proposal and any additional information submitted.

(i) Before requiring a school and its nonaccredited courses to meet any additional criteria, the State approving agency must present a written proposal to the Secretary or designee justifying the need for the additional criteria and containing an attestation that the criteria will treat all schools equitably, regardless of whether they are public, private or for-profit institutions. The written proposal must contain a description of the need for the additional criteria and an explanation of how the imposition of the additional criteria would remedy the problem. The proposal must also contain a statement concerning whether State or Federal laws, regulations, or policies require the imposition of the additional criteria and an explanation of the consideration of any alternative means to achieve the same goal as the additional criteria.

(ii) The Secretary or designee may request such additional information from the State approving agency as the Secretary or designee deems appropriate before determining whether the criteria are necessary and treat schools equitably.

(iii) The Secretary or designee may change the determination at any time if, after implementation, it becomes apparent that the criteria are unnecessary or schools are treated inequitably under the criteria.

\* \* \* \* \*

(Authority: 38 U.S.C. 3676(c), (f))

4. Amend § 21.4259 by adding paragraph (e) to read as follows:

§ 21.4259 Suspension or disapproval.

\* \* \* \* \*

(e) The Secretary or the appropriate State approving agency will disapprove a licensing and certification program of education if the educational institution providing the program of education fails to publicly disclose in a prominent manner any conditions or additional requirements, including training, experience, or examinations required to obtain the license, certification, or approval for which the program of education is designed to provide preparation.

(1) The Secretary will determine whether a disclosure is sufficiently prominent; however, at a minimum, the educational institution must publish the conditions or requirements on a publicly facing website and in their catalog, and include them in any publication (regardless of medium) which explicitly mentions “educational assistance benefits for servicemembers (and their dependents) or veterans (and their dependents)” or which, in the view of the Secretary, is intended for VA educational assistance beneficiaries.

(2) Individuals continuously enrolled at the same educational institution pursuing a program of education subject to disapproval under paragraph (e) of this section may complete the program of education.

(Authority: 38 U.S.C. 3679(d))

